United States Department of Labor
Employees' Compensation Appeals Board

S.E., Appellant	)	
and	)	**Docket No. 21-0666**
	)	**Issued: December 28, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 15, 2021 appellant filed a timely appeal from a January 26, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted August 27, 2020 employment incident.

FACTUAL HISTORY

On September 2, 2020 appellant, then a 52-year-old postal distributor, filed a traumatic injury claim (Form CA-1) alleging that on August 27, 2020 she sustained a right ankle injury when

[1] 5 U.S.C. § 8101 *et seq*.

cleaning up an area for maintenance while in the performance of duty. She stopped work on that date.

In an undated report of work status (Form CA-3), the employing establishment advised OWCP that appellant returned to full-time work without restrictions effective September 2, 2020.

In a September 11, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received an August 28, 2020 medical record from Marissa Edwards, a physician assistant, noting that appellant related complaints of right ankle pain since August 27, 2020, and that she denied any trauma or injury to the ankle. Ms. Edwards diagnosed a right ankle sprain and ankle pain. OWCP also received a work status note from Ms. Edwards, holding appellant off work on August 28, 2020.

A September 10, 2020 patient portal healthcare summary documented that appellant saw Ms. Edwards on August 28, 2020 for a sprain of the right ankle, ankle pain, and chronic back pain; and that appellant had been referred for x-rays of the ankle due to swelling, which occurred after injuring her ankle at work on August 27, 2020.

In a return to work note dated September 10, 2020, Angela Johnson, a certified registered nurse practitioner, released appellant to return to work effective September 12, 2020.

On September 24, 2020 Ms. Edwards noted that appellant was seen for chronic ankle pain due to an injury, which occurred on August 27, 2020. In an accompanying work excuse note also dated September 24, 2020, she indicated that appellant was seen on that date and requested that appellant be excused from work on the night of September 23, 2020.

In a consultation report dated September 29, 2020, Dr. Christopher Schank, a Board-certified podiatric surgeon, noted that appellant had an injury to the right ankle on August 27, 2020 and that she could return to work without restrictions. In a patient therapy order of even date, he noted a diagnosis of right foot pain.

By decision dated October 15, 2020, OWCP denied the claim, finding that the evidence of record was insufficient to establish that appellant had sustained an injury in the performance of duty, as alleged.

OWCP continued to receive evidence, including a witness statement by E.C., appellant's coworker, who indicated that on August 27, 2020 he observed her wince and limp as she carried supplies.

OWCP also received physical therapy notes for dates of service from October 2 through 19, 2020.

On October 28, 2020 appellant requested reconsideration of OWCP's October 5, 2020 decision and resubmitted evidence previously of record.

By decision dated January 26, 2021, OWCP accepted that the August 27, 2020 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted evidence containing a medical diagnosis in connection with the injury and/or events. Consequently, OWCP found that she had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[8]

---

[2] *Supra* note 1.

[3] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[7] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted August 27, 2020 employment incident.

In support of her claim, appellant submitted a consultation report dated September 29, 2020, wherein Dr. Schank, noted that appellant had an injury to the right ankle on August 27, 2020 and that she could return to work without restrictions. A therapy order also dated September 29, 2020 by Dr. Schank contained a diagnosis of right foot pain. The Board has held that pain is a description of a symptom, not a firm diagnosis of a medical condition.[9] A medical report lacking a firm diagnosis is of no probative value.[10] As such, this evidence is insufficient to meet appellant's burden of proof.

OWCP also received various notes signed by Ms. Edwards, a physician assistant, and Ms. Johnson, a certified registered nurse practitioner, including a September 10, 2020 patient portal healthcare summary, which documented a diagnosis of sprain of the right ankle and ankle pain. The Board has long held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered qualified physicians as defined under FECA.[11] Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[12] Consequently, the notes of Ms. Edwards and Ms. Johnson are insufficient to meet her burden of proof.

The remainder of the medical evidence includes physical therapy reports dated October 2 through 19, 2020. As noted above, these reports have no probative value, because physical therapists are not considered physicians as defined under FECA.[13]

As the evidence of record is insufficient to establish a medical condition causally related to the accepted employment incident, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

---

[9] *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

[10] *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

[11] Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

[12] *Id.*; *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

[13] *Supra* note 11.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted August 27, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board